

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In Re:	§	
	§	
FRANKLIN ACQUISITION, LLC	§	Case No. 18-30185-hcm
	§	(Chapter 11)
Debtor	§	

**CHAPTER 11 TRUSTEE’S MOTION TO SELL REAL PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES (717 E. San Antonio)**

**BIDS FROM OTHER INTERESTED PARTIES WILL BE CONSIDERED AT THE HEARING IN
ADDITIONAL INCREMENTS OF \$ 5,000.00; IN ORDER FOR A BID TO BE ACCEPTED,
EARNEST MONEY IN CERTIFIED FUNDS OF FIVE PERCENT (5%) OF THE PURCHASE PRICE
MUST BE TENDERED BY 5:00 PM ON THE DATE OF THE HEARING.**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Ronald Ingalls, Chapter 11 Trustee in the above-styled and referenced case (“Trustee”), in this chapter 11 case, filing this his *Motion to Sell Real Property Free and Clear of Liens, Claims, Interests and Encumbrances (717 E. San Antonio)* pursuant to 11 U.S.C. §§ 363(b) and (f), and in support thereof would respectfully show the Court as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 157 and 1334. It is a core proceeding pursuant to 11 U.S.C. § 157(b)(2)(N). Venue is proper in this District, Division and before this Court. The Motion itself is grounded in 11 U.S.C. §§ 105 and 363.

Factual Background

2. Franklin Acquisitions, LLC (“Debtor” or “Franklin”), filed for relief under Chapter 11 of the Bankruptcy Code on February 6, 2018. William D. Abraham, Jr., an individual holding 100% of the equity interest in the Debtor, also filed for relief under chapter 11 on the same date under Bankruptcy Case No. 18-030184.

3. By Order entered on March 13, 2018, the Court ordered the appointment of a chapter 11 trustee. Ronald Ingalls was appointed as Chapter 11 Trustee on March 26, 2018..

4. The Schedules filed in the Abraham and Franklin cases show that, as of the Petition Date. Debtors were the holders of legal or beneficial interests in at least twenty-eight (28) pieces of real property in El Paso and Hudspeth Counties. Approximately fifteen (15) of these properties are located in El Paso's Central Business District and three (3) of the fifteen (15) hold historical designations.

5. As of this date, orders approving the sale of three properties have been entered by the Court. One sale was to the City of El Paso and two were sold after active bidding at the hearings on the Motions to Sell. The sale to the City of El Paso has closed and the other two are expected to close in early September. The sales prices for the two properties sold at auction were approximately 23% higher than the prices offered by the initial bidders.

6. On July 24, 2018. Downtown Renaissance Joint Venture (also known in some pleadings as "El Paso Renaissance Joint Venture"("DPRJV")) filed a Disclosure Statement [Dkt. No. 137] and Plan of Reorganization [Dkt. No. 138], which proposed to purchase eighteen (18) of the properties listed in the Abraham and Franklin schedules for a total purchase price of \$ 10.4 million. On August 8, 2018, DPRJV filed a Motion to Compel Mediation of Disputes Concerning Creditor's Plan of Liquidation [Dkt. No 156]..

7. On August 14, 2018, the Court entered an Order Requiring Mediation [Dkt. No. 170]. The Trustee, William D. Abraham, Franklin Acquisitions, LLC, the City of El Paso and DRJV (and its joint venturers) conducted a mediation on August 29, 2018. A resolution of their pending disputes was reached between several of the parties and a Settlement Agreement (At Mediation)("Settlement Agreement") was executed by the Trustee, DRJV Franklin Mtn. Management and Ondason, LLC, pending Court approval.

8. The Settlement Agreement requires, in part, that the Trustee file motions to sell certain properties with initial bidders and bids. The property located at 717 E. San Antonio in El Paso ("Property" or "717 E. San Antonio"" or "Toltec Building") is one of these properties.

Legal title to this property was transferred by Debtor Abraham , to Debtor Franklin Acquisitions in July of 2014 and is currently held in the name of Debtor Franklin Acquisitions, which is owned in its entirety by Debtor Abraham according to his Schedules. Its legal description is:

210 CAMPBELL W. ½ OF BLOCK (7754 SQ FT)

9. The Toltec Building is a historic building located in the El Paso Central Business District. It was designed by Henry C. Trost and was built in 1910. It once housed the Toltec Club which Pancho Villa was reputed to patronize. According to the Debtor's schedules, the property has a month to month lease with A Quick Bail Bonds and permissive tenancies with Café de Tolteca and Carlos Cardenas. The Buyer may terminate or extend these tenancies as allowed under applicable non-bankruptcy law.

The Offer and Property Valuation

10. The Trustee as Seller and Courtron, LLC or assigns as Buyer will be entering into a Contract of Sale for the Toltec Building for \$ 850,000.00 subject to this Court's approval and receipt of a higher and better offer. A copy of the Contract of Sale will be submitted at the hearing although interested bidders may obtain a copy of same by written request as soon as it is available. The El Paso County Appraisal District has valued the property at \$1,438,590.00. The Debtor has scheduled the value of the Property at \$ 4,000,000 based on "prior offers."

10. The Trustee received a prior offer for \$800,000 and DRJV proposed an allocation in its Plan of Liquidation of \$1,252,000.

Information About the Sale

11. Following is information about the proposed sale:

a. **The name and address of the proposed buyer:**

Courtron, LLC or its assigns
3737 Gateway Blvd W
El Paso, Texas 79903-4555

b. **The proposed consideration to be received by the estate, including estimated costs of the sale or lease, including commissions, auctioneer's fees, costs of document preparation and recording and any other customary closing costs:**

- \$ 850,000, 000.00
- 6% broker's commissions --\$ 51,000.00 on the above purchase price
- Seller shall also pay for a title policy, preparation of the deed and bill of sale, one-half of any escrow fee and costs to record any documents to cure title objections that Seller must cure.
- Taxes will be pro-rated.as of the date of closing

c. **A description of the estimated or possible tax consequences to the estate, if known, and how any tax liability generated by the use, sale or lease of such property will be paid:**

Unknown

12. A preliminary title search and review of the Schedules and proofs of claim filed in this case indicate the following liens, judgments, and other claims may exist against the Real Property:

- City of El Paso for tax years 2017 and 2018 in the amount of \$ 98,820.92
- Propel Financial Services-assignment of tax liens for delinquent *ad valorem* taxes for tax years 2014 through 2016 in the amount of \$84,322.87 plus accrued interest
- Olive Organization—lien for money lent in the amount of \$425,669.78 (claim #7).

Additionally, Ivan Aguilera, IGSFA Management, LLC, Loretta Lynch and the City of El Paso all hold judgment liens against Debtor Abraham. There have been some communications from some of these creditors that the transfer to Franklin from Debtor Abraham prior to the Petition Dates may have been a fraudulent transfer. However, any liens that are determined to be valid as to this Property will attach to the net proceeds of the sale.

14. The 2018 *ad valorem* taxes in the approximate amount of \$ 44,878.36 will be pro-rated between the Seller and the Buyer as of the date of closing. The Property shall be sold subject to such taxes. All *ad valorem* tax liens and Olive Organization will also be satisfied at closing unless there is a dispute as to any of the amount claimed, in which case the title company will hold the disputed amounts until an order is entered by this Court. Any other liens, claims,

interests and encumbrances will attach to the proceeds from the sale to the same extent, priority and validity as existed on the petition date

15. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C §363(b)(1). Section 363(f)(2) allows the trustee to sell property free and clear of liens if the lienholders consent. The Trustee intends to seek consent from the lienholders. In the alternative, the sale price appears to exceed the amount of all the non-judgment liens against the Property and the Trustee does not believe that any of the liens created by abstracts after the transfer have attached to the Property.

16. The Trustee is legally able to execute the documents to consummate this sale from Debtor Franklin to Courtron, LLC.

17. The sale shall be subject to higher and better offers. The Trustee shall seek higher and better offers to be submitted in open court by means of an auction at the date and time of the hearing. Any competing offer, however must commit as part of its offer to cure code violations within a time period acceptable to the City of El Paso and must satisfy the City of its financial ability to do so. The Trustee seeks approval of the offer which would maximize the net proceeds to the estate.

WHEREFORE, Ronald Ingalls, Chapter 11 Trustee of the bankruptcy estate of William D. Abraham, Jr., respectfully requests that the Court grant this Motion and authorize the sale of the real property located at 717 E. San Antonio, El Paso, Texas (“Toltec Building”) free and clear of all liens, claims and interests as set out in this Motion, and for such other and further relief to which he may show himself entitled.

DATED: September 10, 2018

Respectfully Submitted,

BARRON & NEWBURGER, P.C.

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Austin, Texas 78731

(512) 649-3243

(512) 476-9253 Facsimile

By: /s/ Stephen W. Sather
Barbara M. Barron (SBN 01817300)
Stephen W. Sather (SBN. 17657520)

ATTORNEYS FOR TRUSTEE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application was served by first class mail, postage prepaid and properly addressed, on September 10, 2018, to all parties listed on the attached Service List.

/s/Stephen W. Sather